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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CONTAINER RECOVERY, INC.,	)	
	)	
Plaintiff,	)	Civil Case No. 05-1749-PK
	)	
vs.	)	ORDER
	)	
SHASTA NORTHWEST, INC.,	)	
	)	
Defendant.	)	
_____	)	

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KING, Judge:

The Honorable Paul Papak, United States Magistrate Judge, filed Findings and Recommendation on May 3, 2007. The matter is before this court. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Both parties filed objections to the Findings and Recommendation, as well as responses.

When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

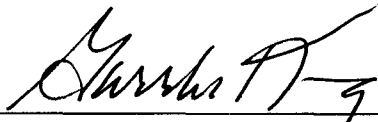
Having given a *de novo* review of the issues raised in the objections to the Findings and Recommendation, I find no error. Specifically, Judge Papak committed no error when he concluded that defendant Shasta Northwest, Inc. ("Shasta") was entitled to summary judgment on Container Recovery Inc.'s ("CRINC") claim that Shasta breached the modified Service Agreement by improperly applying the 12.9% formula to its sales. As noted by Judge Papak, CRINC's prior admission, documentary evidence, and fourteen year operational history conflicted with the declaration submitted by CRINC. Shasta's response to CRINC's objections

on this point are persuasive. As a result, I agree with Judge Papak that the declaration was insufficient to raise a material issue of fact to defeat summary judgment.

Similarly, Judge Papak committed no error when he concluded material issues of fact precluded granting the remainder of Shasta's Motion for Summary Judgment. Shasta failed to raise any objections about CRINC's declarations to Judge Papak. Given Judge Papak's personal knowledge of the issues in this case, I exercise my discretion and decline to consider the new arguments raised by Shasta in its objections. See Aleck v. United States of America, No. CV 04-277 AS, 2005 WL 2709502 (D. Or. Oct. 21, 2005) (Judge Haggerty refused to consider arguments made for the first time in objections to Judge Ashmanskas' Findings and Recommendation).

Accordingly, I ADOPT Judge Papak's Findings and Recommendation (#54) and I GRANT in part and DENY in part Shasta Northwest Inc.'s Motion for Summary Judgment (#29), as set out in the Findings and Recommendation.

Dated this 11<sup>th</sup> day of June, 2007.

  
\_\_\_\_\_  
Garr M. King  
United States District Judge